

AGENDA BILL APPROVAL FORM

Agenda Subject: Ordinance No. 6238		Date: August 11, 2009
Department: Public Works	Attachments: Ordinance No. 6238	Budget Impact: \$
Administrative Recommendation: City Council to introduce and adopt Ordinance No. 6238.		
Background Summary: <p>Ordinance No. 6238 repeals Chapter 13.32, Underground Wiring of the Auburn city Code and adopts a replacement Chapter 13.32A, Underground Wiring. In preparing revisions to Chapter 13.32 staff identified several significant revisions that were needed to provide clarification to the City's undergrounding requirements and is proposing adoption of a replacement chapter rather than modifying the existing code. The new Chapter 13.32A is intended to cover several areas including the following:</p> <ol style="list-style-type: none"> 1. Provide for specific exemptions from the undergrounding requirements, 2. Allow temporary aerial uses for certain situations, 3. Identify the requirements to underground related to private development for both distribution facilities and individual services, 4. Provide for the deferral of these requirements in certain situations, and 5. Identify the requirements for property owners to underground services when the City has initiated a project that includes the undergrounding of aerial distribution facilities. <p>In addition, revisions to certain sections of Chapter 13.36, CCTV, of the Auburn City Code are proposed to eliminate duplication of the undergrounding requirements and to clarify references to appropriate to Titles 12, 13 and 20 of the City code.</p> <p>W0817-3 03.10.9</p>		
Reviewed by Council & Committees: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> COUNCIL COMMITTEES: <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input checked="" type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>		Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input type="checkbox"/> Fire <input type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Call for Public Hearing __/__/__ Referred to _____ Until __/__/__ Tabled _____ Until __/__/__		
Councilmember: Wagner		Staff: Dowdy
Meeting Date: : August 17, 2009		Item Number: VIII.A.1

ORDINANCE NO. 6 2 3 8

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, REPEALING CHAPTER 13.32 OF THE AUBURN CITY CODE; ADOPTING A NEW CHAPTER 13.32A OF THE AUBURN CITY CODE; AND AMENDING SECTIONS 13.36.090, 13.36.110, AND 13.36.130 OF THE AUBURN CITY CODE, ALL RELATING TO UNDERGROUND WIRING

WHEREAS, Chapter 13.32 of the Auburn City Code governs the undergrounding of utilities within the City; and

WHEREAS, the Council finds that revisions to Chapter 13.32 are necessary to provide clarification to the City's existing procedures for undergrounding and to more fully address issues such as exemptions, temporary aerial service, undergrounding requirements for private development, deferrals of undergrounding, and requirements for property owners to underground services related to a City initiated project; and

WHEREAS, the Council finds that the scope of such revisions makes the repealing of ACC Chapter 13.32 and the adoption of a new Chapter 13.32A more efficient than making wholesale changes to the existing code; and

WHEREAS, Chapter 13.36 of the Auburn City Code separately addresses the undergrounding requirements for cable television facilities within the City; and

WHEREAS, the Council finds that Chapter 13.36 should be amended to eliminate this duplicate undergrounding requirement and to replace several generic references to other portions of the Auburn City Code in that Chapter with specific citations to Titles 12, 13, and 20 of the Auburn City Code,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN,
WASHINGTON, DO ORDAIN as follows:

Section 1. Amendment to City Code. That Chapter 13.32,
Underground Wiring, of the Auburn City Code be and the same hereby is
repealed.

Section 2. Adoption of new chapter of City Code. That a new
Chapter 13.32A, Underground Wiring, of the Auburn City Code be and the same
hereby is adopted to read as follows:

**Chapter 13.32A
UNDERGROUND WIRING**

Sections:

- 13.32A.010 Scope.
- 13.32A.020 Exceptions.
- 13.32A.030 Definitions.
- 13.32A.040 Temporary Aerial Services.
- 13.32A.050 Requirements – New Utility Distribution Facilities.
- 13.32A.060 Requirements – Existing Utility Aerial Distribution
Facilities.
- 13.32A.070 Requirements – Utility Service Connections.
- 13.32A.080 Permitting.
- 13.32A.090 Joint Trenches.
- 13.32A.100 (Not used)
- 13.32A.110 Financial Responsibilities – Private Development.
- 13.32A.120 Deferral of Underground Distribution Facilities.
- 13.32A.130 City Project Process and Requirements.
- 13.32A.140 Local improvement regulations apply.
- 13.32A.150 Authority.
- 13.32A.160 Violation – Penalty.

13.32A.010 Scope.

- A. It is found and determined by the City that the general
necessity, convenience, health, safety and welfare require
that electrical and telecommunication utility facilities be
constructed underground in an orderly manner in
accordance with the requirements specified in this Chapter.

- B. The scope of this Chapter is to provide policies and standard procedures for regulation of installation, operation, and management of all aerial and underground utility wiring and conduits within the City of Auburn.
- C. This Chapter shall apply to all electrical and telecommunication utility facilities, including but not limited to power, telephone and cable television facilities, within the corporate city limits; provided, however, the facilities identified in ACC 13.32A.020 are excepted from the undergrounding requirements of this Chapter.
- D. This Chapter clarifies the applicability of all other titles, and all other chapters of this Title 13, of the Auburn City Code regarding the subject of undergrounding, to foster management of City rights-of-way to the benefit of the public, and to prescribe the specific procedures and permits to be used to regulate each activity.
- E. All improvements subject to this Chapter shall also meet the requirements of the Engineering Design and Construction Standards of the City.
- F. In addition to the provisions of this Chapter, Chapter 13.36 ACC, Cable Television, also governs the installation and management of all underground facilities related to cable television services and franchises within the corporate boundaries of the City.
- G. In addition to the provisions of this Chapter, ACC Title 20, Telecommunications and Other Commercial Utilities, also governs the installation and management of all underground facilities related to commercial utilities and telecommunication services and Chapter 12.24 ACC, Construction Permits, also governs right-of-way agreements, franchises, and leases within the corporate boundaries of the City.
- H. In the event of a conflict between the provisions of this Chapter and other portions of the Auburn City Code, the provisions of this Chapter shall control.

13.32A.020 Exceptions.

- A. The following facilities are exempt from the undergrounding requirements of this Chapter:
 - 1. Electric utility substations, pad mounted transformers and switching facilities not located on the public right-of-way and authorized through existing or future site-specific development approvals;

2. Electric aerial transmission facilities of a voltage of more than 15,000 volts, including poles, wires, and associated facilities;
3. Street lighting and traffic control equipment as determined necessary by the City Engineer;
4. Telecommunication pedestals and other equivalent telecommunication facilities; and
5. Temporary aerial utility services for construction that will be removed immediately upon completion of construction.

13.32A.030 Definitions.

The definitions of this Chapter are specific to this Chapter.

- A. "Aerial" means those utility facilities which currently exist on poles, or which may be installed on poles within city rights-of-way or city utility easements at a future date with the City Engineer's approval.
- B. "Applicant" means the owner or owners of record of the property pursuing the development or redevelopment of property within the jurisdiction of the City.
- C. "Conduit" means any pipeline, duct, or protective enclosure used for electrical conductors, coaxial cable, multiconductor cable, or fiber optic cable, telecommunications trunkline or used for conveyance of gas, petroleum, or other commercial products.
- D. "Conversion" means a project being performed by the City to convert an area of existing aerial utility facilities to underground facilities.
- E. "Conversion area" means the area that has been identified by the City in relation to a City project that will be requiring the aerial utility systems to be undergrounded, including all affected utility customers.
- F. "Electric utility" means any utility engaged in the business of furnishing electric energy to the public and includes electric companies as defined by RCW 80.04.010 and public utility districts.
- G. "Permanent Structures" means any commercial, industrial or residential structure that is greater than 120 square feet and is on a fixed foundation including but not limited to uses such as offices, businesses, warehouses, homes, garages, barns, and storage buildings.
- H. "Power Distribution Facilities" means those electrical utility facilities of less than 15,000 volts that provide direct service to customers and are not considered transmission systems.

- I. "Service connection" means utility facilities extending from a distribution system and terminating on private property to serve a customer or subscriber.
- J. "Telecommunications" is the transmission of information by wire, optical cable, or other similar means, including but not limited to telephone, cable television, and data transmission services. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.
- K. "Telecommunication utility" means any utility engaged in the business of affording telecommunications services to the public in all or part of the conversion area.
- L. "Temporary Structures" means a structure that is 120 square feet or less in size, mobile in nature and will be removed from the site within the time frame allowed for temporary aerial services.
- M. "Utility" means those companies' providing electric power or telecommunications services within the corporate boundaries of the City of Auburn, Washington.
- N. "Utility facility" means any and all utility-owned or operated conduits, wires, cables, fiber optics, or other devices used to transmit, transport, or distribute electric power or telecommunications services, and any appurtenances thereto.

13.32A.040 Temporary Aerial Services.

The City Engineer may allow utility service connections for permanent structures to be temporarily located aurally for up to 180 calendar days. Extensions beyond the 180 calendar days for temporary aerial service connections for permanent structures may be authorized by the Public Works Committee of the City Council, such authorizations may include financial securities or other instruments to insure the conversion of the aerial system to an underground system by the end of the extension period authorized.

13.32A.050 Requirements – New Utility Distribution Facilities

All new utility distribution facilities shall be underground. The installation of all new utility facilities for subdivisions shall also meet the requirements identified in 17.14 ACC.

13.32A.060 Requirements – Existing Utility Aerial Distribution Facilities

- A. All existing utility aerial distribution facilities shall be undergrounded in connection with new private development unless one of the following criteria is met:
1. The City Engineer determines that undergrounding of the portion of the existing aerial facilities along the development's street frontage would require undergrounding portions of the aerial distribution facilities extending beyond the development's street frontage unless an additional extension of no more than 50 feet of the underground system is needed on either end of the street frontage to connect to logical points of the existing utility system; or
 2. The development is the conversion of one single family residence to a commercial use as defined in the Residential Office zoning district, ACC Chapter 18.22; or
 3. The development is a new commercial development on a lot that is 11,000 square feet or smaller in area and located in the RO, CN, C1, or C3 zone; or
 4. The development is wholly interior improvements to an existing building; or
 5. The development is an addition, alteration or repair of an existing building structure, where the building permit valuation per ACC 15.07.080 is less than 50% of either;
 - a. The assessed value of the existing building structure(s) on the subject property as determined by the most current property assessment by the County Assessor of the County in which the property is located; or
 - b. The value of the existing building structure(s) as determined by an appraisal performed by an MAI appraiser certified by the State of Washington, which appraisal shall be paid for and provided by the property owner.
- B. Repairs to an existing utility aerial service facility may be made aerially.
- C. For City projects, the City Council shall determine whether the undergrounding of existing aerial utility distribution facilities shall be required in association with the City project.

13.32A.070 Requirements – New Utility Service Connections

A. All new utility service connections shall be underground unless one of the following criteria is met:

1. The existing distribution system and any service connections serving the customer or subscriber are aerial and the building, structure, or facility to be served is new construction, an addition, alteration, or repair where the building permit valuation per ACC 15.07.080 is under \$20,000 in value.
2. The installation of a new or replacement service connection in an area where the existing utility distribution facility and/or existing service connection is aerial and meeting at least one of the following criteria:
 - a. The construction of a single family residence on an existing platted lot; or
 - b. The conversion of one single family residence to a commercial use as defined in the Residential Office zoning district, ACC Chapter 18.22; or
 - c. A new commercial development on a lot that is 11,000 square feet or smaller in area and located in the RO, CN, C1, or C3 zone; or
 - d. Wholly interior improvements made to an existing building; or
 - e. For existing building structures, where the building permit valuation per ACC 15.07.080 of an addition, alteration, or repair to the existing structure is less than 50% of either:
 - i. The assessed value of the existing building structure(s) on the subject property as determined by the most current property assessment by the County Assessor of the County in which the property is located; or
 - ii. The value of the existing building structure(s) as determined by an appraisal performed by an MAI appraiser certified by the State of Washington, which appraisal shall be paid for and provided by the property owner.

13.32A.080 Permitting.

All permits for the installation of aerial and underground utility facilities within existing City rights-of-way or easements shall be processed and reviewed under Chapter 12.24 ACC, Construction Permits.

13.32A.090 Joint Trenches

Where several underground utilities are planned or required in the same alignment, the utilities shall use a joint trench for such facilities unless demonstrated to the satisfaction of the City Engineer that a joint trench is not feasible.

13.32A.110 Financial Responsibilities – Private Development

For private development, the cost of constructing new underground utility facilities, or relocating existing aerial facilities underground, shall be borne by the serving utilities, the owners of the real property to be served or others requesting such underground services in accordance with the applicable filed tariffs or the rules and regulations or the published policies of the respective utilities furnishing such service or as may be contractually agreed upon between the utility and such owner or applicant.

In addition, all such conversion of electric and telecommunication utility facilities to underground facilities may be undertaken by local improvement district or as otherwise permitted by law and as further authorized by RCW 35.96.030 and 35.96.040.

13.32A.120 Deferral of Underground Distribution Facilities.

A. The City Engineer may grant a deferral for some or all of the undergrounding of utility distribution facilities otherwise required pursuant to this Chapter following the procedures identified in ACC 12.64A.050, Deferral and Fee in Lieu of Improvements. The City Engineer's decision regarding such a deferral will be based on meeting the following criteria rather than those listed in ACC 12.64A.050:

1. There is a pending City 6 year TIP Project or an adjacent developer planned project which would affect the proposed area of undergrounding of the existing aerial facilities; or
2. A Franchisee is expanding their existing aerial system as a secondary tenant on an existing aerial system (the undergrounding of the expansion will not eliminate the existing aerial system); or

3. All of the following conditions are met:
 - a. There are other properties abutting or across the street from the subject property that have aerial utility facilities; and
 - b. The establishment or continuation of aerial utility facilities for the period of the deferral will not adversely affect or delay other properties that may have to provide or convert to undergrounding utility improvements within the public right-of-way; and
 - c. There are technological difficulties associated with converting to or providing undergrounding utility improvements for the subject property as demonstrated to the satisfaction of the City Engineer.
- B. An applicant whose request has been denied may appeal the denial following the procedure as identified in ACC 12.64A.060, Appeal and Enforcement.

13.32A.130 City Project Process and Requirements.

- A. City Responsibilities.
 1. When service from underground electric and telecommunication utility facilities becomes available in all or part of a conversion area, the City Engineer shall issue a directive to the owners of all structures or improvements with service connections to the existing or temporary overhead utility facilities in the area by means of mailing a certified notice stating that:
 - a. Service from the underground utility facilities is available;
 - b. To facilitate completion of the City's project, all electric and telecommunication service connections from the existing aerial utility facilities within the area to any structure or improvement must be decommissioned, disconnected and removed within 90 calendar days after the date of mailing;
 - c. Should such owner fail to complete conversion of such service connections from the aerial system to the underground system within 90 calendar days after the date of mailing, the City will order the electric and telecommunication

utilities to disconnect and remove the service connections;

- d. The owner may object to the disconnection and removal of the service lines as provided in ACC 13.32A.130.D.

- 2. Time in consummating such connection and disconnection of aerial services is of the essence and such notice to the property owner or occupant of the affected premises may be mailed.

B. Property Owner's Responsibilities.

- 1. Such conversion of the service connection, including installation of any underground service connections, shall be completed within 90 calendar days of the city's mailing set forth in ACC 13.32A.130.A and RCW 35.96.050 that service from the underground utility facilities is available.
- 2. Property owners wishing to discontinue utility service shall provide written notice of that intent to the City Engineer within 30 calendar days of receipt of the City Engineer's notice that the underground system is available for service.
- 3. If the owner of any structure or improvement with a service connection to an existing aerial electric and/or telecommunication utility facility within a conversion area fails to convert the service connection from aerial to underground service within 90 calendar days after the date of the mailing of the notice set forth in ACC 13.32A.130.A, the City Engineer shall order the electric and/or telecommunication utilities to disconnect and remove all such service connection; provided, that if the owner has filed written objections to such disconnection and removal with the city clerk within 30 calendar days after the mailing, then the City shall not order such disconnection and removal until after the appeal hearing on such objections.

C. Financial Responsibilities.

- 1. For City projects, the cost of relocating existing utility aerial distribution facilities shall be borne by the serving utility and the City in accordance with the filed tariffs or franchise agreement. In absence of a filed tariff or franchise agreement, the cost of the relocation of existing aerial distribution facilities shall be borne by the serving utility.

2. For City projects, the undergrounding of the service connections for real property served by the aerial electric or telecommunication utility facilities that are being relocated underground shall be at the owner(s)'s expense, including:
 - a. Decommission, disconnect, and remove the service connections from those utility facilities to any structures or improvements located on the property.
 - b. Either install underground service connections to those structures/improvements on the property or, upon approval of the city engineer, discontinue utility service to one or more of the structures/improvements on the property.
 3. All such conversion of utility facilities to underground facilities may be undertaken by local improvement district or as otherwise permitted by law and as further authorized by RCW 35.96.030 and 35.96.040.
- D. Appeal Procedures.
1. A property owner may object to the disconnection and removal of an aerial service connection by filing a written objection thereto with the City Clerk within 30 calendar days after the date of the mailing of the notice set forth in ACC 13.32A.130.A. Failure to object within such time will constitute a waiver of the owner's right thereafter to object to such disconnection and removal.
 2. Upon the timely filing by the owner of an objection, the owner shall have the right to file an appeal of the city engineer's directive, which shall be heard by the city of Auburn Hearing Examiner.
 3. All appeals filed pursuant to this section must be filed in writing with the Public Works Director within 10 working days of the filing date of the owner's written objection and shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the city engineer's decision, which shall constitute the basis of the complaint.
 4. Upon receipt of a timely written appeal, the Public Works Director shall review the materials submitted and prepare a written staff report detailing the rationale of the City Engineer's directive and findings of fact for the hearing examiner.

5. The Public Works Director shall schedule the hearing in accordance with Chapter 18.66 ACC and notify the contesting party of the scheduled hearing.

13.32A.140 Local improvement regulations apply.

Unless otherwise provided for in RCW 35.96.010 et seq., all the general provisions related to local improvements of cities and towns shall likewise apply to local improvements for the conversion of aerial electric and telecommunication facilities to underground facilities within the city limits.

13.32A.150 Authority.

The City Engineer or designee shall be responsible for the application of this Chapter related to public rights-of-way.

The Building Official or designee shall be responsible for the application of this Chapter related to real property.

13.32A.160 Violation – Penalty.

Any violation of this Chapter shall be enforced pursuant to the provisions of Chapter 1.25 ACC.

Section 3. Amendment to City Code.

That Section 13.36.090 of

the Auburn City Code be and the same hereby is amended to read as follows:

13.36.090 Technical standards and maintenance.

- A. Subject to federal, state and local law, a franchisee shall comply with FCC Rules, Part 76, Subpart K, Section 76.601 through 76.610 and as amended, hereafter, and, at the minimum, the following:
 1. Applicable city, county, state and national/federal codes, laws and regulations;
 2. Applicable utility joint attachment practices;
 3. The National Electric Safety Code; ANSI C2;
 4. Local utility code requirements;
 5. Local rights-of-way procedures, in accordance with ACC Titles 12, 13 and 20.
- B. A comprehensive routine preventive maintenance program shall be developed, effected and maintained to ensure continued top quality cable communications operating standards in conformance with FCC Regulations Part 76 and amendments thereto. (Ord. 4625 § 2, 1993.)

Section 4. Amendment to City Code.

That Section 13.36.090 of the Auburn City Code be and the same hereby is amended to read as follows:

13.36.110 Construction standards.

All facilities constructed pursuant to the provisions of this chapter shall be placed and maintained at such places and positions in or upon such streets, avenues, alleys and public places as shall not interfere with the passage of traffic and the use of adjoining property, and shall conform to the applicable sections of the National Electrical Code, codes of the state of Washington and ACC Titles 12 and 13 ~~city regulations~~ pertaining to such construction. (Ord. 4625 § 2, 1993.)

Section 5. Amendment to City Code.

That Section 13.36.130 of the Auburn City Code be and the same hereby is amended to read as follows:

13.36.130 Undergrounding and landscaping.

Undergrounding of all utility facilities will meet the requirements of ACC 13.32A. ~~In those areas and portions of the city where the transmission or distribution facilities of the public utility providing telephone service or those of the facility providing electric service are underground or hereafter may be placed underground, a franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities in the same area underground. All activities shall be conducted in coordination with other utilities but not necessarily in the same trench. Amplifiers and associated equipment in a franchisee's transmission and distribution lines may be in appropriate housing upon the surface of the ground.~~

~~Where undergrounding is required as a result of a city street improvement project, the city shall provide trenching for underground installation of cable.~~ (Ord. 4625 § 2, 1993.)

Section 6. Implementation.

The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 7. Severability. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 8. Effective date. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

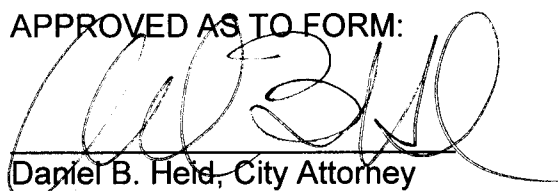
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Held, City Attorney

Published: _____